IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7628 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANCHALBEN JETHABHAI BHIKHABHAI PATEL & 1 - Petitioner(s)

Versus

STATE OF GUJARAT THRO.SECRETARY & 4 - Respondent(s)

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Appearance :

MR BHARAT T RAO for Petitioner(s) : 1 - 2.
MR AMIT PATEL, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/05/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioners have prayed for an appropriate writ, direction and/or

order quashing and setting aside the judgment and order passed by the Gujarat Revenue Tribunal dated 30.6.2005 passed in Revision Application No. TENBS 221/1995 and to restore the order dated 30.6.1995 passed by the Deputy Collector (LR), Surat passed in Tenancy Appeal No. 2/1995 by which the order dated 30.7.1994 passed by the Mamlatdar & ALT, Choryasi in Tenancy Case No.36/1994 was confirmed by the Deputy Collector (LR), Surat.

2. The dispute is with regard to the land bearing Survey No.76 Block No.81 situated at village Devadh, Taluka Choryasi, District Surat. The petitioner No.1 was the owner of the aforesaid land. That the respondent Nos.3 to 5 herein purchased the said land by registered sale-deed dated 5.12.1980 and the necessary entry was mutated in the revenue record being mutation entry No. 630 in the year 1980 itself and it was also certified by the Competent Authority. That the Deputy Collector, Choryasi initiated suo-motu revisional powers and has taken the

aforesaid sale-deed / transaction in suo-motu revision in the year 1994 on the ground that the respondent Nos.3 to 5 were non-agriculturists and the said transaction was in violation of provisions of Section 63 of the Bombay Tenancy Act. The Deputy Collector directed the Mamlatdar & ALT, Choryasi to initiate the proceedings under Section 84(C) of the Act and accordingly, the Mamlatdar & ALT, Choryasi initiated the proceedings which was numbered as Tenancy Case No. 36/1994. The Mamlatdar & ALT, Surat vide order dated 30.7.1994 held that the respondent Nos.3 to 5 were not agriculturists when they purchased the land in question and therefore, he held the said transaction as invalid and in breach of provisions of Section 63 of the Act. Being aggrieved and dissatisfied with the order passed by the Mamlatdar & ALT, Choryasi dated 30.7.1994 passed in Tenancy Case No. 36/94, the respondent Nos.3 to 5 preferred appeal before the Deputy Collector (LR), Surat being Tenancy Appeal No. 2/1995 and the Deputy Collector, Surat dismissed the said appeal confirming the

order passed by the Mamlatdar & ALT, Choryasi. Being aggrieved and dissatisfied with the order passed by the Deputy Collector (LR), Surat dated 30.6.1995 passed in Tenancy Appeal No. 2/1995 the respondent Nos. 3 to 5 preferred revision application before the Gujarat Revenue Tribunal being Revision Application No. TENBS 221/1995 and the Gujarat Revenue Tribunal by its impugned judgment and order dated 30.6.2005 has been pleased to allow the said revision application quashing and setting aside the order dated 30.6.1995 passed by the Deputy Collector (LR), Surat passed in Tenancy Appeal No. 2/1995 as well as the order passed by the Mamlatdar & ALT, Choryasi dated 30.7.1994 passed in Tenancy Case No. 36/1994. Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dated 30.6.2005 passed in Revision Application No. TENBS 221/1995 the petitioners – original land owners – sellers have preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri B.T.Rao, learned advocate appearing for the petitioners has vehemently submitted that the Gujarat Revenue Tribunal has materially erred in allowing the said revision application and quashing and setting aside the order passed by the Deputy Collector (LR), Surat dated 30.6.1995 passed in Tenancy Appeal No. 2/1995 inasmuch as the transaction between petitioner No.1 and the respondent Nos.3 to 5 and the sale-deed was in breach of provisions of Section 63 of the Bombay Tenancy Act and the said transaction was a nullity and therefore, the learned Tribunal ought not to have confirmed the said transaction / sale-deed and ought not to have quashed and set aside the order passed by the Deputy Collector (LR), Surat. Shri Rao has also further submitted that after the order passed by the Deputy Collector (LR), Surat dated 30.6.1995 passed in Tenancy Appeal No. 2/1995, vide agreement dated 10.2.2005 entered into between the petitioners and the respondent Nos.3 to 5, a sum of Rs.10 Lacs was repaid to the respondent

Nos.3 to 5 and remaining amount was agreed to be paid within next 14 months and therefore, it is submitted that after pocketed a sum of Rs. 10 Lacs, the respondent Nos.3 to 5 cannot claim any right on the basis of the sale-deed of 1980. It is further submitted that as the respondent Nos.3 to 5 were non-agriculturists at the time when they purchased the land in question, the transaction is hit by Section 63 of the Act and therefore, it is requested to allow the present Special Civil Application.

4. It is required to be noted that the petitioner No.1 has sold the land in question in favour of the respondent Nos. 3 to 5 by registered sale deed and has pocketed the money. The transaction of 1980 was taken under suo-motu revision by the Deputy Collector in the year 1994 i.e. after the period of 14 years of the transaction and even after 14 years of the necessary entries in the revenue record. Considering the fact that the suo-motu power was exercised after the period of unreasonable delay i.e. after the period of 14

years, the Tribunal has quashed and set aside the order passed by the Deputy Collector. As the powers were exercised after the period of 14 years and the same were found to be exercised after unreasonable delay and when the Tribunal has set aside the said order, it cannot be said that the Tribunal has committed any illegality in setting aside the order passed by the Deputy Collector (LR), Surat. On the contrary, the order passed by the Gujarat Revenue Tribunal is in consonance with the decisions of this Court as well as the Hon'ble Supreme Court with regard to exercising the powers belatedly.

5. It is also required to be noted that so far as the petitioners are concerned, the petitioner No.1 is the original land owner who has sold the land in question to the respondent Nos. 3 to 5 by registered sale deed in the year 1980. Once he has sold the land and he is the party to the transaction and has pocketed the money at the relevant time, it is not open for the petitioner No.1 to challenge the said transaction of which

he is a party to the said transaction. Identical question came to be considered by the learned Single Judge of this Court in case of ***Dashrathlal M. Patel & Others V/s. State of Gujarat & Others*** reported in **2007 (1) GLH 106** and as per the said decision, when the seller who executed the sale deed in favour of the purchaser and after receiving the consideration challenged the transaction as illegal on the statutory provision and when the petition was preferred under Article 227 of the Constitution of India, the learned Single Judge in the said decision has observed that, ***the petition under Article 227 of the Constitution of India at the instance of such a seller is not required to be entertained.*** The Learned Single Judge has also considered another decision of this Court in the case of ***Prahladbhai Monahbhai Patel V/s. Vithalbhai Mohanbhai Patel*** in **Special Civil Application No. 4647 of 2005** and the following observations of the said decision :-

"#. Having considered the above, it appears that it is an admitted position

that the father of the petitioner, by accepting consideration, has executed sale deed in favour of the respondent no.1. Therefore, father of the petitioner, whose interest is being represented by the petitioner, is a party to the transaction, which is found to be in breach of the statutory provisions by the Prant Officer. The State Government, in exercise of the revisional jurisdiction has found that the action is taken after unreasonable delay, inasmuch as the transaction is of 1963 and even if it is considered that the action was taken immediately after entry was mutated in the revenue record, then also, the effect of the delay cannot be said as wiped out. In any case, the State has not preferred petition before this Court and the petitioner's father who was party to the transaction, as such, cannot be said to be aggrieved by the decision of the State Government. So will be the case, in the event, the petitioners are representing the interest as legal heirs of the party to the transaction. One who is a beneficiary of the transaction, once having taken benefit, cannot be allowed to contend that the transaction is illegal or is in

contravention to statutory provision and, therefore, even though he has enjoyed the benefit of transaction, the property, which is already sold, should be given back to him or should be taken away by the statutory authority.(Emphasis supplied) ***At this stage, it would be worthwhile to refer to certain observations of the Division Bench of this Court in the case of Patel Ratilal Maganbhai & others Vs. State of Gujarat, 2003 (1) GLR 562. This Court had, in the said decision, while considering the challenge made by one of the parties to the transaction of sale against the decision of the authority, observed inter alia at para-13 as under:-***

"... Seller of the transaction in case of voluntary sale is required to file a suit before the appropriate court for declaration that the sale is void, even if he is seeking a declaration that the transaction of sale is void on account of non-availability of permission of the competent authority. Since it is a question of voluntary sale, seeking declaration of such voluntary sale as void at the instance of the seller of the land, taking into consideration the

decision of the Full Bench in the case of Jadav Prabhatbhai Jethabhai, 2001 (1) GLR 16, such seller much approach the Court within the period of limitation for declaration that the sale is invalid or void and the period of limitation as provided under law is of three years from the date of such sale."”

6. Under the circumstances, when the Deputy Collector exercised the powers after the period of 14 years i.e. after unreasonable delay and the said order came to be set aside by the Gujarat Revenue Tribunal, it cannot be said that there is any illegality committed by the Gujarat Revenue Tribunal which calls for the interference of this Court in exercise of the powers under Article 227 of the Constitution of India. Even otherwise, considering above, the petitioner No.1 cannot challenge the order passed by the Gujarat Revenue Tribunal as he himself was a party to the transaction and the sale deed. If there are any rights in favour of the petitioners on the basis of subsequent

development and/or transaction and/or agreements, the same would be a fresh cause of action and for that the petitioners can initiate appropriate proceedings before the appropriate forum, however, so far as challenge to the order passed by the Gujarat Revenue Tribunal impugned in the present Special Civil Application is concerned, it cannot be said that the same warrants any interference of this Court in exercise of the powers under Article 227 of the Constitution of India. Under the circumstances, present Special Civil Application is required to be dismissed and is accordingly, dismissed.

[M.R.Shah, J.]

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